

COMPLIANCE BOARD OPINION NO. 97-14

August 22, 1997

Ms. Joyce J. Willis

The Open Meetings Compliance Board has considered your complaint concerning the Mayor and Council of Chestertown. The issue is whether the Mayor and Council violated the Act by conducting interviews of applicants for a Council vacancy in closed session. For the reasons stated below, the Compliance Board finds that the Open Meetings Act was not violated.

I

Facts

A vacancy existed in the Council of Chestertown. Under Article 8 of the Town's Charter, "In case of a vacancy on the council for any reason, the Mayor and Council, within 45 days, shall elect from the same ward in which the vacancy occurred some qualified person to fill such vacancy for the expired term."

Several people applied to fill the vacancy, and the Mayor and Council wanted to interview them all. These interviews occurred in closed sessions on May 12 and May 15, 1997.

In your compliant, you suggested that the interview of the applicants for the Council vacancy should not have been conducted in closed session. In a timely response on behalf of the Council, R. Stewart Barroll, Esquire, expressed the view, which he had previously conveyed to the Mayor and Council, that the Act did not apply to the process by which the Council fills a vacancy. This process, he advised, was an "executive function" not subject to the Act.

II

Discussion

With exceptions not pertinent here, the Open Meetings Act does not apply to a public body when it is carrying out an "executive function." §10-503(a)(1)(i) of the State Government Article, Maryland Code. In analyzing

whether a particular discussion falls within the executive function exclusion from the Act, we begin by considering whether the discussion falls within the definition of any other “function” defined in the Act. If it does, then the discussion perforce cannot fall within the executive function exclusion, because the definition of “executive function” excludes matters within any other defined function. §10-502(d)(2).

A function to which the Act applies is the “legislative function.” One component of the definition of “legislative function” is “the process or act of ... approving or disapproving an appointment” §10-502(f)(2). This provision does not apply, however, to a public body when it is *making* an appointment, rather than “approving or disapproving” one.

In Compliance Board Opinion 95-5 (October 18, 1995), we considered whether the Board of Education for Baltimore County was engaged in a “legislative function” when it named an acting school superintendent. Concluding that the school board was not, we explained our view of §10-502(f)(2):

To be sure, the definition of “legislative function” includes “approving or disapproving an appointment.” §10-502(f)(2). Nevertheless, the Compliance Board believes that this phrase does not refer to the process by which a public body itself makes an appointment. The terms “approving or disapproving” denote a response to someone else’s appointment.....

One of the traditional functions of a legislative body is to confirm or reject an appointment made by an executive authority. Presumably, the General Assembly had this function in mind when it included “approving or disapproving an appointment” within the “legislative function.” The phrase “approving or disapproving” can also comfortably encompass a supervisory board’s decision whether to concur with a proposed appointment to be made by a subordinate. However, when the School Board considered whom *it* might wish to name as interim superintendent, it was *making* an appointment, not “approving” one.

Compliance Board Opinion No. 95-5, at 3.

This reasoning applies here. When the Mayor and Council interviewed applicants for the Council vacancy, they were engaged in part of the process through which they themselves intended to fill the vacancy. That this process

ultimately did not result in their filing the vacancy, because of a tie vote, is immaterial to the legal analysis, because the interviews were part of a process expected to result in their making an appointment. Instead of performing part of a legislative function, the Mayor and Council were engaged in an executive function: implementing Article 8 of the Town Charter. In other words, they were engaged in “the administration of ... a law of a political subdivision ...,” an executive function, and so the Act did not apply.

III

Conclusion

In summary, the Compliance Board holds that the Mayor and Council of Chestertown did not violate the Open Meetings Act when it conducted interviews of applicants for the Council vacancy in closed session.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
Courtney McKeldin
Tyler G. Webb